

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

2
3 Solid and Hazardous Waste Commission

4 Hazardous Materials and Waste Management Division (HMWMD)

5 6 CCR 1007-2

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8 STATEMENT OF BASIS AND PURPOSE
9 AND SPECIFIC STATUTORY AUTHORITY FOR

10 Amendment of Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2 Part 1) –
11 Section 1.2 Definitions – Revision of the definitions of “Agricultural wastes”, “Composting”, and
12 “Environmental Media”; Addition of the definition of “Anaerobic digestion”; and deletion of
13 definition of “Custom mill”
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16 Statement of Basis and Purpose:

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18 **Note:** The Department will be convening at least one stakeholder meeting to discuss these
19 proposed changes. As such, work on the regulatory language may continue up to the rulemaking
20 hearing date. It remains the Department’s goal to resolve all stakeholder concerns by the hearing
21 date.
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24 Statutory Authority

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26 These amendments to 6 CCR 1007-2, Part 1 are made pursuant to the authority granted to the Solid and
27 Hazardous Waste Commission in § 30-20-109, C.R.S.
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30 Discussion of Regulatory Proposal

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32 I. Changes to the definition of “Agricultural Wastes”
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34 In Colorado law, “agricultural wastes” are specifically exempted from those materials that are
35 solid waste. The statute, in § 30-20-101(6)(b)(II), C.R.S., states that ““Solid Waste” does not
36 include: . . . Agricultural wastes.” However, the term “agricultural wastes” is not defined in statute.
37 The Division is proposing the following changes to the definition of “Agricultural Wastes” in the
38 regulations.
39

40 The Division is proposing to delete the words “*solid wastes*” in the first phrase of the definition
41 and replace it with the phrase “*discarded materials.*” Using the term “solid waste” in the definition
42 of a term that describes a material that is not “solid waste” creates confusion.
43

44 The Division is also proposing to strike the phrase “*resulting from the raising of crops or animals*
45 *on land zoned agricultural by local requirements.*” Agricultural wastes can be generated on land
46 that is not necessarily zoned “agricultural.” Wastes such as manures and crop residues can be
47 generated on residentially, commercially, and even industrially zoned land. The Division
48 proposes replacing this deleted language with, “*that directly result from the raising of crops or*
49 *livestock. Agricultural waste also includes manure, irrigation water and irrigation run-off and*

50 *return flows.*” This language succinctly describes the materials we believe were intended to be
51 included in the agricultural waste universe.

52
53 The Division further recommends that the phrase *“that are returned to the soils as fertilizer, soil
54 conditioner or compost, or are composted to return to the soils”* be stricken from the definition.
55 The first part of this phrase has been moved to the end of the first paragraph of the definition.
56 This second part of this phrase was added to allow agricultural waste to be composted at a facility
57 that was not the original site of generation so long as the composted agricultural waste was
58 eventually returned to the soil. With the addition of the change explained in the following
59 paragraph, this phrase is no longer necessary.

60
61 The Division believes clarification is needed to explain the limited circumstances in which
62 agricultural wastes lose the exemption and become solid wastes. The Division believes there are
63 three such situations. First, if agricultural wastes are mixed with other solid wastes, then the
64 resulting mixture becomes a solid waste. This is consistent with how other mixtures of regulated
65 and non-regulated materials are handled – the more stringent requirements apply. The second
66 situation occurs when agricultural wastes are disposed of at a permitted solid waste disposal site
67 and facility. In this case, the agricultural wastes are not being utilized for their fertilizer, soil
68 conditioning or compost properties and must be managed by the receiving facility in the same
69 way other solid wastes are managed. The third situation occurs when agricultural wastes are
70 placed in or on the land in quantities that overwhelm the fertilization, soil conditioning, or
71 composting values of the materials or in placement geometries where the value of the material to
72 the soil or growing crops cannot be realized. The Division believes these situations are either
73 improper disposal, “use constituting disposal,” or landfarming, all of which would require
74 permitting through the local governing authority and the Department.

75
76 Generally speaking, the Division believes that agricultural wastes should remain exempt from
77 regulation as solid waste even if they undergo processing or treatment. So long as the material
78 was agricultural waste going in to the process or treatment, so long as the agricultural waste is
79 not mixed with solid waste, and so long as the processing or treatment residues are returned to
80 the soils for fertilizer, soil conditioners, or compost then the wastes from the process remain
81 agricultural wastes. This means, for instance, that anaerobic digestion using only agricultural
82 wastes as inputs would generate only agricultural wastes along with the methane gas that is used
83 on-site or sold. Food processing generally starts with agricultural products, not agricultural
84 wastes. Therefore, food processing wastes would be solid wastes even if they are subsequently
85 composted or applied to soils for fertilizer, soil conditioners, or compost.

86
87 The last change is a conforming change driven by other changes proposed herein. In all-hazard
88 events or depopulation events caused by such things as blizzards, or diseases such as bird flu,
89 burial pits are sometimes necessary to deal with the large numbers of animal carcasses. The
90 Division believes flexibility to use burial pits needs to be preserved.

91
92 II. Changes to the definition of “Composting”

93
94 We are recommending that the definition of “composting” be changed in two places. First, we are
95 recommending that vermicomposting be added as an additional type of composting.
96 Vermicomposting is a method of using worms to transform organic waste into a nutrient-rich
97 fertilizer. Though a small niche in the composting industry, vermicomposting is a well-established
98 and traditional composting method. Second, we are recommending that the phrase *“of piles and
99 windrows”* be removed from the definition because not all composting utilizes piles and/or
100 windrows.

101
102 III. Addition of a definition for “Anaerobic Digestion”

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104 As anaerobic digestion becomes an increasingly common treatment for organic waste streams,
105 the Department is getting many inquiries about how and when the process will be regulated.

106 While the term “anaerobic digestion” does not currently appear in the Solid Waste regulations,
107 anaerobic digestion of solid waste could be regulated by various combinations of Section 2
108 (minimum standards), Section 8 (beneficial use), Section 9 (surface impoundments), Section 14
109 (composting), and Section 18 (waste grease), depending on the design and operation of the
110 facility. Therefore, the Department feels it is time to develop a definition for the term. The first
111 part of the proposed definition comes from the American Biogas Council’s definition of anaerobic
112 digestion. The second part of the proposed definition provides context for its application.
113

114 IV. Deletion of the definition of “Custom Mill”
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116 The definition of Custom Mill is being deleted from Section 1.2 of the Solid Waste regulations
117 because the term is never used within the regulations and because Custom Mills are not
118 regulated by the CDPHE, but are instead regulated by the Department of Natural Resources in
119 their Division of Mine Reclamation and Safety.
120

121 V. Changes to the definition of “Environmental Media”
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123 The Division recommends that two changes be made to the definition of “Environmental Media.”
124 First, we recommend that surface water and ground water be added as an additional category of
125 environmental media. Surface water and ground water are considered environmental media in
126 the hazardous waste program, and the Solid Waste Program has operated as if they were non-
127 regulated materials. It is therefore time to officially add them to this definition.
128

129 The second addition to the definition of “Environmental Media” is to add clarification for the limited
130 circumstances in which environmental media could become solid wastes. The Division believes
131 there are two such situations:

- 132 1. If environmental media are mixed with other solid wastes, then the resulting mixture becomes
133 a solid waste. As explained previously, this is consistent with how other mixtures of regulated
134 and non-regulated materials are handled – the more stringent requirements apply. This is
135 clear when soil or other earthen environmental media are visibly mixed with a solid waste
136 such as construction and demolition debris. It would also be true, however, when
137 environmental media are mixed with unseen contamination – for instance, asbestos fibers in
138 soil, or dissolved contamination in surface or ground water. When environmental media,
139 either soil or groundwater becomes contaminated, such as with a petroleum spill to soil or a
140 leachate release to groundwater, and such media is then removed as part of a cleanup or
141 generated as investigation derived waste as with purge water from a groundwater sampling
142 event, the resultant material is no longer environmental media, but rather, a solid waste.
- 143 2. When environmental media are disposed of at a permitted solid waste disposal site and
144 facility. In this case, the environmental media must be managed by the receiving facility in
145 the same way other solid wastes are managed.
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147 Cost/Benefit Analysis
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149 A cost-benefit analysis will be performed if requested by the Colorado Department of Regulatory
150 Services.